



CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
FAX (408) 292-6207

City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Lee Price, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that **"Ordinance No. 28693"**, the original copy of which is attached hereto, was adopted on the **26th day of January, 2010**, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED..

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

VACANT: NONE.

Said ordinance is effective as of **January 26, 2010**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **January 28, 2010**.

(SEAL)

LEE PRICE, MMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/RMK

ORDINANCE NO. 28693

**AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE
REPEALING SECTION 6.02.160 OF CHAPTER 6.02 AND
AMENDING CHAPTER 6.60 OF TITLE 6 OF THE SAN
JOSE MUNICIPAL CODE TO AMEND THE DEFINITION
OF PUBLIC ENTERTAINMENT TO LIMIT THE
APPLICATION OF THE PUBLIC ENTERTAINMENT
PERMIT ORDINANCE TO VENUES WITH OCCUPANCY
GREATER THAN ONE HUNDRED, LIMIT THE
DISCRETION OF THE CHIEF OF POLICE IN APPROVING
APPLICATIONS FOR PERMITS AND LICENSES, LIMIT
THE DISCRETION OF THE CHIEF OF POLICE IN
SETTING CONDITIONS ON PERMITS AND LICENSES,
SPECIFY TIME LINES BY WHEN AN APPLICATION FOR
A PERMIT OR LICENSE MUST BE ACTED UPON,
CLARIFY PROVISIONS TO ENSURE CONSISTENCY
THROUGHOUT THE CODE; AND SETTING FORTH THE
FACTS CONSTITUTING THE URGENCY**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 6.02.160 of Chapter 6.02 of Title 6 of the San José Municipal Code is hereby repealed.

SECTION 2. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.015 Manager

“Manager” means any person performing the type of duties generally performed by a general manager or supervisor, an assistant manager or supervisor, or a security manager or supervisor, including, but not limited to the following: supervising employees or agents of the permittee; making business decisions about the permittee’s public entertainment business, including but not limited to hiring, disciplining or firing employees, and contracting with agents or other

persons; making decisions regarding the resolution of significant operational issues that arise during the permittee's hours of operation; making final decisions about the scheduling of the permittee's employees or agents; having primary responsibility for the opening or closing of the permittee's public entertainment business; and, being a person to whom permittee's employees and agents direct San José Police Officers, San José Fire Inspectors, or San José Code Enforcement Inspectors for responses to directives, questions or requests for information.

SECTION 3. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.025 Premises

"Premises" means the location where the permittee is offering public entertainment.

SECTION 4. Section 6.60.030 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.030 Public Entertainment

A. "Public entertainment" means a business open to the public where alcohol is sold on the premises, the premises has a maximum occupant load that exceeds one-hundred (100) persons, as determined by the Fire Marshal of the San José Fire Department, and where one or more of the following activities are also provided or allowed:

1. Dancing;
2. Singing;

3. Audience participation in the entertainment; or
 4. Live entertainment.
- B. "Public entertainment" shall not include taverns, bars, lounges, cocktail lounges and other drinking establishments where electronically reproduced music emanating from a loudspeaker system is provided for the listening pleasure of patrons, so long as no other entertainment is provided or suffered by the owner, operator or manager of the drinking establishment.

SECTION 5. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.035 Security Personnel

"Security personnel" means those persons who perform security related tasks on behalf of the permittee, including, but not limited to: removing problem patrons and guests from the premises, removing illegal contraband from patrons and guests at the premises, checking identifications of patrons and guests to ensure minimum age compliance with local and state laws, and escorting patrons and guests from the premises.

SECTION 6. Section 6.60.040 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.040 Public Entertainment Business Permit Required

It shall be unlawful for a person to maintain, manage, operate, conduct, control or own a public entertainment business unless the business is maintained and operated in strict compliance with a valid public entertainment business permit.

SECTION 7. Section 6.60.060 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.060 Public Entertainment Ownership/Management License Required

- A. It shall be unlawful for any person to work as a manager or have an ownership interest in a public entertainment business without having first obtained a public entertainment ownership/management license from the Chief of Police.
- B. It shall be unlawful for a permittee to have any person work as a manager or have an ownership interest in a public entertainment business without such person first having obtained a public entertainment ownership/management license from the Chief of Police.

SECTION 8. Section 6.60.200 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.200 Operating Regulations And Permit And License Conditions

- A. The provisions of this Part shall constitute terms and conditions applicable to each public entertainment business permit and each public entertainment ownership/management license issued by the Chief of Police.

- B. The provisions of this Part shall also constitute operating regulations that are applicable to each holder of a public entertainment business permit and each holder of a public entertainment ownership/management license issued pursuant to this Chapter.
- C. It shall be unlawful for any person permitted or licensed under this Chapter, or any person required to be permitted or licensed under this Chapter, whether or not such persons are actually so permitted or licensed, to violate any provisions of this Part.
- D. For purposes of this Part only, any reference to "permittee" shall also include any person in possession of a public entertainment ownership/management license and any persons required to be permitted or licensed under this Chapter, whether or not such persons are actually so permitted or licensed.

SECTION 9. Section 6.60.220 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.220 Conditional Use or Planned Development Permit

The permittee shall maintain a valid conditional use permit or planned development permit or evidence of a legal nonconforming use satisfactory to the City.

SECTION 10. Section 6.60.240 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.240 Security

The permittee shall comply with the standards for internal and external security arrangements specified below.

- A. At all times while the public entertainment business is open to the public there shall be a minimum of two (2) security personnel on duty for up to and including the first one hundred (100) patrons and guests on site. Once the number of patrons and guests exceeds one hundred (100), there shall be an additional two (2) security personnel on duty for up to and including every additional one hundred (100) patrons and guests on site. "On site" means and includes all patrons and guests within the premises and waiting in line to enter the premises.
- B. The Chief of Police shall be authorized to increase the number of security personnel required to be on duty at any time if the Chief of Police deems the increase is necessary to protect the public health, safety and welfare.
- C. The security personnel shall provide security in front of the premises and at adjacent parking sites used by patrons and guests.
- D. If found, security personnel shall remove illegal contraband from patrons and guests and immediately turn the contraband over to the proper law enforcement authorities.
- E. All security personnel shall register and maintain valid registration status with the State of California's Department of Consumer Affairs ("State"). At no time, shall any security personnel register with the State at any level that is less than that of a Proprietary Private Security Officer. Proof of application and registration for all security personnel shall be maintained by the permittee and shall consist of

copies of all relevant documentation including: application forms, receipts for application fees and live scan fees, and actual proof of registration.

- F. At closing time, the security personnel shall be responsible for clearing the permittee's patrons and guests from the sidewalk and street areas in front of the premises and from other areas accessible to persons around the perimeter of the premises.
- G. The security personnel shall start their shift no later than 9:00 p.m. and shall remain on the premises for at least one-half hour past closing time or after all patrons and guests have vacated the area immediately surrounding the premises and the adjacent parking lots used by patrons and guests, whichever is later.
- H. While on duty, all security personnel shall have a nameplate containing the security personnel's full name and the word "SECURITY" printed in bold, capital letters. The nameplate shall be exhibited prominently on the clothing, at chest level, and shall be visible and easily read at all times. The nameplate shall be a minimum of two (2) inches high and four (4) inches wide, with the required information printed in capital letters, at least three-fourths ($\frac{3}{4}$) inches high and in a contrasting color. Hanging name badges and lanyards are prohibited. As an alternative to a nameplate, the security personnel's name and the word "SECURITY" may be embroidered on the security personnel's outermost garment with the required information meeting the above specifications and located at chest level.
- I. The permittee shall not allow any security personnel to, and no security personnel shall, sit at the bar, consume alcoholic beverages or any controlled substance, be under the influence of alcoholic beverages or any

controlled substance, or engage in any other violations of law while on duty.

- J. The permittee shall not allow any security personnel to be, and no security personnel shall be, in possession of any firearm while on the premises without first having obtained a license from the appropriate state or local agency authorizing the security personnel to be in possession of a firearm.
- K. If the permittee employs security personnel that will be in possession of a firearm while on the premises, the permittee shall, no less than (10) days prior to the date the security personnel will begin employment with the permittee, provide the Chief of Police with a copy of the license issued by the appropriate state or local agency to the security personnel authorizing the security personnel to possess such firearm. In addition, ten (10) days prior to the date the security personnel will begin employment with permittee, the security personnel shall provide the Chief of Police with a copy of his or her law enforcement identification (if he or she is employed by a law enforcement agency) and his or her California Driver's license or California identification card.

SECTION 11. Section 6.60.250 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.250 Waiting Lines

The permittee shall ensure that no patrons, guests waiting in the queue, rope, or any other mechanism used to control the queue, impedes pedestrian travel in the pedestrian walkway outside the premises at any time. Queues shall also be arranged so as to prevent the blockage of neighboring businesses, minimize impacts on any adjacent uses, and prevent disturbances of the public peace.

SECTION 12. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.255 On-Site Manager

- A. At least one person in possession of a valid public entertainment ownership/management license shall be on the premises at all times while public entertainment is being provided. Said person shall cooperate fully with the Chief of Police, or any City official responsible for enforcing the provisions of this Code, with any inquiry, inspection, reasonable request, or investigation necessary to implement the requirements of this Code or to enforce any other local, state or federal law.
- B. In the event a permittee terminates employment of a manager or hires new persons to manage the business, as described in Section 6.60.015, the permittee shall report such change, in writing, to the Chief of Police.

SECTION 13. Section 6.60.270 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.270 Occupancy Limit

The permittee shall comply with the maximum occupancy load as set by the Fire Marshal of the San José Fire Department.

SECTION 14. Section 6.60.300 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.300 Procedures and Determinations

The procedures set forth in Part 1.5 of Chapter 6.02 for summary suspension of permits and licenses shall govern the summary suspension of any business permit or ownership/management license issued pursuant to this Chapter. The procedures set forth in Sections 6.60.310 through 6.60.385 shall govern the application for, the investigation, approval, denial, suspension and revocation of, the term and transferability of, and the fees for, any business permit or ownership/management license issued pursuant to this Chapter.

SECTION 15. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.335 Application - Form

An application for any permit or license required by this Chapter must be filed on the form provided by the Chief of Police.

SECTION 16. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.340 Separate Permit or License

Every person shall be required to secure separate permits and licenses in accordance with the requirements of this Chapter for each and every separate place of business conducted by such person.

SECTION 17. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.345 Permit or License Application

- A. Applications for a permit or license shall contain or be accompanied by the following:
1. If the applicant is:
 - a. An individual, the individual shall state his or her legal name and any aliases and shall submit satisfactory proof that he or she is twenty-one (21) years of age.
 - b. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any.
 - c. A closely held corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors and of each stockholder, and the name and address of the registered corporate agent for service of process.

- d. A corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation, evidence that the corporation is in good standing under the statutes of the state (or in the case of a foreign corporation, evidence that it is currently authorized to do business in the state), the names and capacity of all officers, directors and principal owners, and the name and address of the registered corporate agent for service of process.
 - e. A limited liability company, the company shall state its complete name, the date of filing of the articles of organization and operating agreement, and the names of all managers and members.
- 2. The legal name under which the business is to be conducted;
 - 3. The complete street address and all telephone numbers of the proposed public entertainment business;
 - 4. Proof of the applicant's right to possess the premises where the public entertainment business is proposed to be conducted;
 - 5. The following personal information concerning the applicant, if an individual; and concerning each stockholder, each officer and each director, if the applicant is a closely held corporation; and concerning each partner, including limited partners, having an ownership interest in the business of more than ten percent, if the applicant is a partnership; and concerning each of the managers or other person in charge of the operation of the business:

- a. Name, complete current residence address and residence telephone numbers;
 - b. If the person has resided at the current residence address for less than three (3) years, the previous addresses immediately prior to the present address of the applicant for the last three (3) years;
 - c. Height, weight, color of hair and eyes, and gender;
 - d. Photograph in a form acceptable to the department head;
 - e. The business history experience, including but not limited to, whether or not the person previously operating in this or another city, county or state under a permit or license, has had a permit or license denied, revoked or suspended and the reasons therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation;
 - f. All criminal convictions, other than misdemeanor traffic violations and infractions, for any offense listed in Section 6.60.370, the jurisdiction in which the conviction occurred, and the circumstances thereof;
 - g. One set of fingerprints in a form provided by the department.
6. Proof of payment of any applicable business tax for the public entertainment business which is due to the City pursuant to Chapter 4.76 of the Code;

7. Authorization for the Chief of Police to seek other information that the Chief of Police considers necessary for a complete investigation and to conduct an investigation into the truth of the statements set forth in the application, including, but not limited to, a criminal history investigation with the California Department of Justice and other law enforcement agencies;
 8. A dated statement signed by the applicant certifying under penalty of perjury that the information provided by the applicant is true and correct.
- B. An application shall not be deemed complete until all the information required in subsection A. has been provided to the Chief of Police and the required fees and any applicable business tax required pursuant to Chapter 4.76 of the Code have been paid.

SECTION 18. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.350 Posting and Exhibition of Permit or License

- A. Every person shall keep any permit or license issued pursuant to this Chapter exhibited prominently in a conspicuous public place on the premises named in the permit or license while engaged in the subject business.
- B. Any permit or license issued pursuant to this Chapter shall be kept in a readily accessible place and shown to any City official responsible for enforcing the provisions of this Code upon request.

SECTION 19. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.355 Investigation and Determination

- A. Upon receiving a completed permit or license application, the Chief of Police shall investigate the information required in Section 6.60.345.
- B. The Chief of Police shall also investigate the premises for the purpose of assuring that the premises complies with the requirements of this Chapter and applicable public health, safety, welfare and zoning laws set forth in this Code and in state law.
- C. The Chief of Police shall make a determination to approve or deny the permit or license application within forty-five (45) days after the applicant has submitted a complete application.

SECTION 20. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.365 Criminal Background Investigation

The Chief of Police shall conduct a criminal background investigation on any person applying for a permit or license under this Chapter.

SECTION 21. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.370 Denial, Suspension or Revocation

An application for a permit or license shall be denied and a permit or license issued pursuant to this Title may be suspended or revoked by the Chief of Police upon any of the following grounds:

- A. Conviction of the applicant, permittee or licensee, within the last five (5) years, of any misdemeanor involving the following:
 - 1. The use of violence, force, fear, fraud or deception;
 - 2. Lewd or lascivious acts;
 - 3. Prostitution;
 - 4. The use of money to engage in criminal activity;
 - 5. The employing or paying of any person upon the premises where alcoholic beverages are sold to procure or encourage the purchase or sale of alcoholic beverages;
 - 6. The sale of distilled spirits in any package which has been refilled or partly refilled; or
 - 7. The maintenance of a disorderly premises.
- B. Conviction of the applicant, permittee or licensee, within the last ten (10) years, of any felony involving the following:
 - 1. The use of violence, force, fear, duress, menace, fraud or deception;

2. Pimping or pandering;
 3. Lewd or lascivious acts;
 4. The use of money to engage in criminal activity; or
 5. The unlawful possession, sale, distribution or transportation of a controlled substance.
- C. Knowingly making a false statement of fact or omitting a fact required to be revealed in an application for the permit or license, or in any amendment or report or other information required to be made thereunder;
- D. The premises in which the permitted or licensed activity will occur is in violation of any building, zoning, health, safety, fire, police or other provision of this Code or of county, state or federal law which substantially affects the public health, welfare or safety;
- E. Violation of the terms and conditions of the permit or license or other requirements of this Code;
- F. The applicant, licensee or permittee has owned or leased a premises that has been the subject of an administrative, civil or criminal nuisance abatement action and court judgment or administrative determination finding the premises to be a nuisance within the past five (5) years;
- G. Employment or otherwise contracting for the services of a manager whose ownership/management application or license has been denied, suspended or revoked;

- H. The holding of any ownership interest of more than ten percent (10%) of a business, other than a publicly traded corporation, by any person whom the Chief of Police has not approved through any applicable ownership/management application procedure;
- I. Failure to pay any disturbance response fee imposed pursuant to Section 6.02.310;
- J. A prior permit or license application has been denied by the City or any state, county or local agency on one or more of the grounds provided in this Section within five (5) years prior to the date of the current application;
- K. A permit or license issued by the City or any state, county or local agency has been revoked or suspended within the past five (5) years;
- L. The applicant, licensee or permittee has conducted the licensed or permitted business, or the business for which the applicant is seeking a permit or license, in a manner that creates or results in a public nuisance, as defined in Section 1.13.050 of this Code or Sections 3479 and 3480 of the California Civil Code, on or within one hundred fifty (150) feet of the premises;
- M. If the applicant is a corporation, the corporation is not in good standing or authorized to do business in the state;
- N. Conducting a public entertainment business, or allowing or offering public entertainment at the premises for which the permit or license is sought, is prohibited under the terms of the lease for that premises.

SECTION 22. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.375 Renewal of Permit or License

No permit or license issued under this Chapter may be renewed unless:

- A. An application for a new permit or license, together with the permit or license fees, has been filed with the Chief of Police prior to the expiration date of the current permit or license; and
- B. The permittee or licensee meets all of the requirements of this Code, including but not limited to Part 3 of this Chapter.
- C. If such application for new permit or license is not filed, or the permit or license fees are not paid, prior to the expiration date of the current permit or license, the permit or license shall be deemed to have expired on the date of expiration noted on the permit or license.

SECTION 23. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.380 Penalty for Late Renewal

Any person who fails for more than thirty (30) calendar days after the expiration of any permit or license issued under the provisions of this Title to apply for a new permit or license shall be required to pay a penalty of ten percent of the amount of the permit or license fee. Such penalty shall be collected by the Chief of Police at the time of the issuance of a new permit or license.

SECTION 24. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.385 Permit And License Nontransferable

No person shall assign or transfer any permit or license issued under this Chapter and any attempt to assign or transfer any permit or license issued pursuant to this Chapter shall render the permit or license void.

SECTION 25. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new Part, to be numbered, entitled and to read as follows:

**Part 5
Hearing And Appeal Procedure**

6.60.500 Notice of Intended Decision

- A. Upon determining the existence of any of the grounds for denial, suspension, or revocation in accordance with Section 6.60.370, the Chief of Police shall issue to the applicant, permittee or licensee a notice of intended decision to deny, suspend or revoke the permit or license.
- B. The notice of intended decision shall state all the grounds and reasons upon which the denial, suspension or revocation is based.
- C. The notice of intended decision shall advise that the denial, suspension or revocation shall become final unless the applicant, permittee or licensee files a written request for hearing before the Chief of Police within the time period specified in Section 6.60.510.

- D. In instances where a permit or license is being revoked or suspended, the notice of intended decision shall specify the effective date of the revocation or suspension of such permit or license.

6.60.510 Procedure for Hearing Before the Chief of Police

With regard to a permit or license issued by the Chief of Police:

- A. The written request for a hearing before the Chief of Police must be received by the Chief of Police within ten (10) calendar days of the date of service of the notice of intended decision to deny, suspend or revoke the permit or license.
- B. Upon receipt of a timely written request for hearing, the Chief of Police shall schedule a hearing which shall be held no later than thirty (30) calendar days after receipt of the request.
- C. The Chief of Police shall serve a notice of hearing on the applicant, licensee or permittee no later than ten (10) calendar days prior to the scheduled date of the hearing.
- D. At the hearing before the Chief of Police, the applicant, licensee or permittee shall be given the opportunity to present witnesses and documentary evidence.
- E. The hearing will be conducted informally and the technical rules of evidence shall not apply. Any and all evidence which the Chief of Police deems reliable, relevant and not unduly repetitious shall be considered.
- F. Issuance of a written notice of cancellation of an insurance policy by the issuer of the policy shall be conclusive proof at the hearing of the effective cancellation of an insurance policy.

6.60.520 Decision of the Chief of Police

- A. Within twenty (20) calendar days after the close of the hearing, the Chief of Police shall serve on the applicant, licensee or permittee a written decision sustaining, reversing or modifying his or her intended decision.
- B. With regard to the denial of an application for a permit or license, an applicant who is dissatisfied with the Chief of Police's decision by the Chief of Police after hearing shall have a choice of either filing an appeal with the San Jose Appeals Hearing Board ("Board") under the terms set out in Section 6.60.530 or accepting the decision of the Chief of Police as final and seeking judicial review pursuant to Section 1094.6 of the Code of Civil Procedure of the State of California.
- C. With regard to the suspension or revocation of a permit or license, the decision by the Chief of Police after hearing shall become final unless the licensee or permittee files an appeal before the Board within the time period specified in Section 6.60.530.

6.60.530 Appeal to Board

- A. If an applicant, licensee or permittee is dissatisfied with the written decision of the Chief of Police, he or she may file an appeal to the Board.
- B. The appeal must be in writing on a form provided by Board and received by the secretary of the Board within ten (10) calendar days of the date the Chief of Police's decision is served upon the applicant, licensee or permittee.
- C. The appeal hearing before the Board shall be conducted in accordance with the rules and regulations of the Board, but shall be heard no later than thirty (30)

calendar days after the receipt of the appeal, or within the next two regularly-scheduled meetings of the Board, whichever is later in time.

- D. Within twenty (20) calendar days after the hearing before the Board, the Board shall serve upon the applicant, licensee or permittee a written decision sustaining, reversing or modifying the Chief of Police's decision.
- E. The decision by the Board after hearing shall be final for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure of the State of California.

SECTION 26. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health and safety. The facts constituting such urgency are as follows: (A) there exists an immediate need in the City to revise and clarify the definition of "Public Entertainment" in the City's Public Entertainment Permit Ordinance ("Ordinance") and revise and clarify the process of the Ordinance in order to narrow and refine the scope of activities that constitute a "Public Entertainment" business and the conditions under which an applicant for a permit must be denied so as to ensure the constitutionality of the Ordinance provisions; (B) there is and continues to be an immediate need for the City to protect those who live in, work in, and visit public entertainment venues, the areas in which those venues are located, and the neighborhoods adjacent to those areas, particularly the City's Downtown and the neighborhoods adjacent thereto; and (C) there exists an immediate need in the City to implement such a revised definition and procedure in order to minimize potential liability to the City and ensure the City's requirements pertaining to Public Entertainment are maintained.

SECTION 27. This Ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San Jose, and shall remain in effect until the effective date of the superseding Ordinance.

ADOPTED this 26th day of January, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

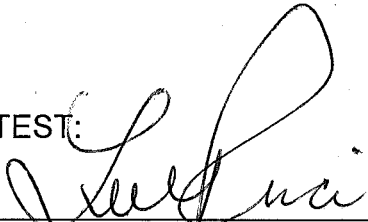
ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk